

806 KAR 5:060. Registration of service contracts for consumer products.

RELATES TO: KRS 304.5-070

STATUTORY AUTHORITY: KRS 304.5-070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.5-070 requires that makers of service contracts who repair, or maintain consumer products register with and maintain registration with the office to be exempt from the definition of casualty insurance. This administrative regulation sets forth the filing requirements for that registration.

Section 1. Definitions. "Maker of service contract" or "maker" is the entity contractually obligated under the terms of the service contract.

Section 2. A maker of a service contract shall register with the office by providing the name and address of its principal office and the other required information or documentation pursuant to Section 3 of this administrative regulation.

Section 3. Service contracts to repair, replace, or maintain consumer products shall not be considered casualty insurance if the maker of the service contract meets one (1) of the following requirements:

(1)(a) Maintains a net worth of at least 100 million dollars and registers with the executive director by providing the following:

1. Its current annual report;
2. A copy of its 10K or 20F form as filed with Securities Exchange Commission; or
3. A financial statement audited by an independent certified public accountant in conformity with generally accepted accounting practices;

(b) Immediately notifies the office in writing of any change that would decrease the net worth of the maker below 100 million dollars;

(2)(a) Maintains an insurance policy or performance bond that:

1. Assures performance of the duties of the maker for all service contracts issued in Kentucky;
2. Shall not be terminated unless at least thirty (30) days prior written notice is given to the executive director; and

3. Shall state that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker; and

(b) Provide a copy of the insurance policy or performance bond; or

(3)(a) Maintain an insurance policy or performance bond that:

1. Is written for an amount of \$50,000 or twenty-five (25) percent of the maker's annual revenues from the service contracts issued in Kentucky, whichever is greater;

2. Shall not be terminated unless at least thirty (30) days prior written notice is given to the executive director; and

3. Shall state that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker; and

(b) Register with the executive director by providing the following:

1. A copy of the insurance policy or performance bond;

2. The amount of annual revenues from the sales of service contracts in Kentucky for the previous year ending December 31; and

3. A projection of the revenue from service contracts to be sold in Kentucky for the current year;

(c) The document giving the required information shall be signed and certified under oath by an

officer of the company.

Section 4. (1) If the initial registration has not been affirmatively accepted or rejected by the executive director within thirty (30) days of filing, then the registration requirements shall be deemed met.

(2)(a) After the initial registration, each maker of a service contract shall annually, on or before March 1, file a report that sets forth or is accompanied by the information required in Section 3 of this administrative regulation;

(b) If a maker ceases issuing service contracts, annual reports shall continue to be filed through the duration of all outstanding service contracts;

(3) If at any time, the maker fails to demonstrate compliance with Section 3 of this administrative regulation, the executive director may revoke the maker's registration. Upon revocation of registration, the maker shall immediately cease issuing service contracts.

Section 5. (1) Each service contract shall conspicuously state the name and address of the maker of the service contract; and

(2) If the maker of the service contract has an insurance policy or performance bond to assure contractual duties, the following must be stated in the service contract:

(a) Name and address of authorized underwriting insurer issuing insurance policy or performance bond; and

(b) A statement that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker. (23 Ky.R. 2368; eff. 2-10-97; TAm eff. 8-9-2007.)